

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DANIEL CAOUETTE,

Plaintiff,

v.

No. 2:21-cv-00970-KWR-KK

MANUAL GONZALES, *et al*,

Defendants.

ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff's *pro se* Motion to Withdraw or Dismiss his Prisoner Civil Rights Complaint (Doc. 6). The Court construes the Motion as a request for voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i). That rule gives plaintiffs a right to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(A)(i). *See also Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003) (noting the right to dismiss under Rule 41(a)(1)(i) is "absolute"). Defendants filed a Motion to Dismiss for Failure to State a Claim, but not an answer or a summary judgment motion. *See* Doc. 4.


Under the plain language of the rule, Plaintiff has an absolute right to dismiss without prejudice. To the extent Rule 41(a)(1)(A)(i)'s reference to "answer" includes any responsive pleading, the Court also finds that dismissal without prejudice is proper under Fed. R. Civ. P. 41(a)(2). That rule allows the court to dismiss a post-answer case "at the plaintiff's request ... on terms the court considers proper." Fed. R. Civ. P. 41(a)(2). This case has only been pending since October 4, 2021, and Plaintiff states he has not refined his claims or named the proper defendants. *See* Doc. 6 at 1. Accordingly, the Court will grant Plaintiff's Motion to Withdraw or Dismiss (Doc. 6). His Motion to Proceed *In Forma Pauperis* (Doc. 3) and Defendants' Motion to

Dismiss for Failure to State a Claim (Doc. 4) will be denied as moot.

IT IS ORDERED that Plaintiff's Motion to Proceed *In Forma Pauperis* (**Doc. 3**) and Defendants' Motion to Dismiss for Failure to State a Claim (**Doc. 4**) are **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Withdraw or Dismiss his Prisoner Civil Rights Complaint (**Doc. 6**) is **GRANTED** and the Court will enter a judgment **DISMISSING WITHOUT PREJUDICE** this case.

IT IS SO ORDERED.


KEA W. RIGGS
UNITED STATES DISTRICT JUDGE